ANNUAL REPORT
1999
Nova Scotia Police Commission

NOVA SCOTIA
Police Commission
&
Police Review Board

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Nova Scotia Police Commission

Research & Design: **E. Garry Mumford & Pamela J. Little**

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Introduction

Role of the Commission

The primary role of the Nova Scotia Police Commission is to investigate and conduct hearings into citizens' complaints alleging misconduct on the part of municipal police officers. The Commission's Police Review Board is also empowered to hear and determine appeals against disciplinary penalties or dismissals imposed or ordered by Chiefs of Police and Boards of Police Commissioners.

The responsibilities of the Nova Scotia Police Commission are outlined in Sections 5 and 5(A) of the Police Act whereby it states, "The Nova Scotia Police Commission shall perform the functions and duties assigned to it by the Police Act, the Governor-in-Council or the Minister of Justice".

These responsibilities include the following:

1. consult with and advise Boards of Police Commissioners and other police authorities and chiefs of police on all matters relating to public complaints and internal discipline;

2. conduct investigations and inquiries in accordance with the Act;

3. provide investigative and administrative support to the Review Board; and

4. make recommendations with respect to amendments to the Act or the Regulations or to any other enactment dealing with law enforcement.

When requested by a Board of Police Commissioners or directed by the Minister of Justice, the Nova Scotia Police Commission is also required, according to Section 8 of the Police Act, to inquire into the conduct and performance of any member of a municipal police force, the administration of any police force, the system of policing in any municipality, or the police needs of a municipality.

Furthermore, the Nova Scotia Police Commission, when directed by the Minister of Justice, is responsible for inquiring into any matter relating to the extent, investigation, or control of crime, as well as the enforcement of law.

Administrative History

The Nova Scotia Police Commission was established in 1976 with the proclamation of the *Police Act*. At that time, the Police Commission reported to the Attorney General, and was responsible for improving municipal police forces and improving relations between the police and the public.
The Police Commission provided a large number of services relating to policing and security in the province, including:

1. the development and approval of training programs for police officers;

2. the development of programs to improve public awareness of police functions, duties, and responsibilities;

3. the maintenance of statistics and research services;

4. the determination of the adequacy, efficiency, and effectiveness of the police services provided by municipalities;

5. the recommendation for appointment or re-appointment of Provincial Civil Constables, Special Constables, and By-Law Enforcement Officers; and

6. other duties under the *Private Investigators and Private Guards Act* and the *Police Services Act*.

In 1992, changes to the *Police Act* resulted in the re-organization and re-orientation of the Nova Scotia Police Commission. The majority of the services listed above were transferred to the Police and Public Safety Division of the Department of the Solicitor General. These services are now the responsibility of the Department of Justice.

The Police Commission retained its responsibility for investigating into matters relating to the conduct and performance of duties by police, the administration of a police force, the system of policing in a municipality, and the police needs of a municipality.

The Nova Scotia Police Review Board was established through amendments to the *Police Act* in the mid-1980s. The establishment of the Police Review Board replaced the Police Commission as the adjudicating body for citizen complaints and appeals against decisions made in internal discipline matters.

The Police Commission investigates and when appropriate attempts to negotiate a resolution to public complaints upon an appeal by the Complainant. If the Investigator feels the complaint has merit he will recommend a full hearing before the Nova Scotia Police Review Board.

Where the Police Commission's Investigator cannot satisfactorily resolve a complaint, or has determined the complaint does not merit a complete review by the Nova Scotia Police Review Board

he may refuse to recommend a hearing. The Complainant may further appeal this decision to the full body of the Police Commission to refer the complaint to the Police Review Board.

The Police Review Board also conducts hearings into matters of internal discipline that are referred to it by the Police Commission. The Chairman of the Police Commission acts as Registrar of the Police Review Board, and the Police Commission provides all administrative support to the Police Review Board

Commission Membership

Under the provisions of Section 4(1) of the Police Act, the Commission is composed of not less than three persons appointed by the Governor-in-Council.

As of December 31, 1999 the members of the Commission were:

M. Jean Beeler	Chair
Paul D. Gates	Member
Denise Mentis-Smith	Member
Franklyn J. Jesty	Member

Commission Staff

As of December 31, 1999

E. Garry Mumford	Director
Pamela J. Little	Administrative Assistant to the Commission
Norma MacDonald	Secretary to the Director

Accommodations

The Nova Scotia Police Commission offices are located at Summit Place, 1601 Lower Water Street, Suite 300, Halifax, Nova Scotia.

Mailing Address:	P. O. Box 1573 Halifax, Nova Scotia B3J 2Y3
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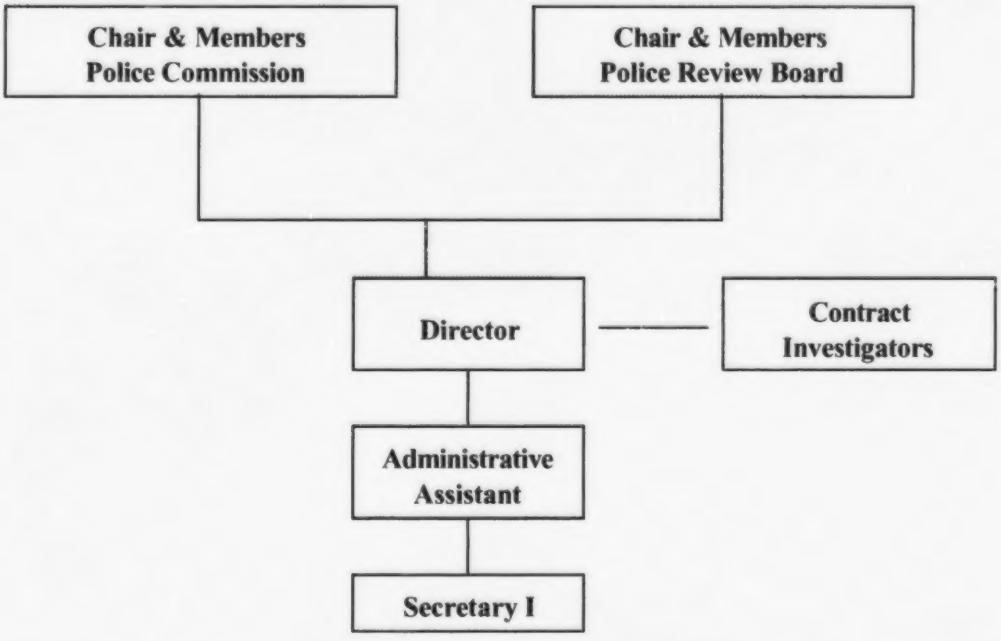
E-Mail:	UARB.POLCOM@GOV.NS.CA

ORGANIZATIONAL CHART

NOVA SCOTIA POLICE COMMISSION
1999



Police Services

Responsibility for policing in Nova Scotia rests with the Department of Justice. At present, the R.C.M.P. is under contract to the province to act as the provincial police force, and under contract to provide municipal police services in a number of municipalities. In 1999, the Province of Nova Scotia had seventeen (17) municipal police departments with an authorized strength of 743 full time members. On August 1, 1999, the Berwick Police Department ceased operations as the Town of Berwick contracted its policing services to the R.C.M.P.

(See Table 1).

TABLE 1

Police Administration Statistics
Municipal Police Departments

Department	Population Size		Full Time Members	
Amherst	9900		22	
Annapolis Royal	583	*	3	*
Berwick	2200		4	
Bridgewater	7500		18	
Cape Breton Regional	69300		153	
Halifax Regional	199100		393	
Hantsport	1300		4	
Kentville	5551		13	
Lunenburg/Mahone Bay	3500		10	
Middleton	1800		6	
New Glasgow/Westville	14000		28	
Springhill	4200		7	
Stellarton	5000		9	
Trenton	6,928	*	8	*
Truro	12938		36	
Unama'ki Tribal	4500		18	
Wolfville	4100		11	
TOTAL	352400		743	

Population figures as of 1998. Force strength as of 1999.

* As reported in the 1998 annual report, no new updates available.

ACTIVITIES OF THE COMMISSION

Meetings

The Commission met to review appeals submitted to the Commission as outlined in Section 15 of the *Police Act* Regulations, and also to attend to regular business items. There were four meetings held in 1999. In those four meetings the Commission in its quasi-judicial function heard ten appeals arising out of the Commission Investigator's decisions not to refer these matters to the Review Board. In nine of the cases the Commission upheld the investigator's decision to not refer the complaint to the Police Review Board for hearing.

Mr. E. Garry Mumford, as Director of the Nova Scotia Police Commission, routinely represents the Police Commission at various meetings and conferences. Some of the events and/or presentations he attended or hosted included the following:

- The Director, as a member of the Police Act Review Committee, attended several meetings throughout the year.

- In February, the Director made a presentation on the roles and function of the Commission to the Canadian Bar Association

- In March, the Commission partnered with Cape Breton Regional Police in providing training in mediation and alternate dispute resolution to supervisory police personnel throughout the province.

- In April, the Director made a presentation to senior municipal police personnel with respect the Police Act and Freedom of Information and Protection of Privacy issues.

- In September the Chair, Jean Beeler and the Director attended the Canadian Association for Civilian Oversight of Law Enforcement (C.A.C.O.L.E.) conference in Saint John, New Brunswick. Jean Beeler stepped down from her role as President of CACOLE and now holds the position of Past President and is still an active member. Ms. Beeler also accepted the position of Vice-President of I.A.C.O.L.E. which is the International Association for Civilian Oversight of Law Enforcement.

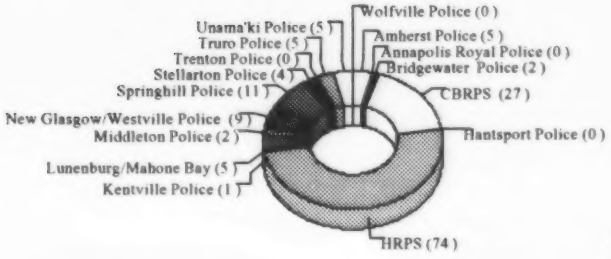
Public Complaints & Internal Discipline

The table below depicts the number of public complaints and internal disciplinary matters received from each of the 17 municipal police departments over the last three years by the Nova Scotia Police Commission.

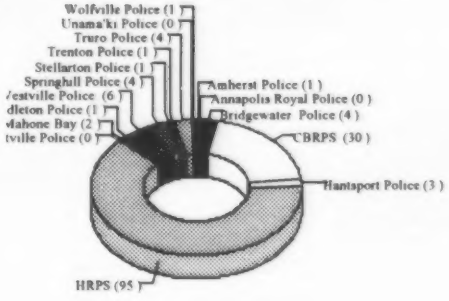
Department	1997		1998		1999	
	PC	ID	PC	ID	PC	ID
Amherst Police	0	2	1	1	5	1
Annapolis Royal Police	1	0	0	0	0	0
Berwick Police	1	2	0	1	0	0
Bridgewater Police	7	1	4	0	2	3
CBRPS	21	7	30	7	27	3
Hantsport Police	1	0	3	0	0	0
HRPS	80	28	95	49	74	21
Kentville Police	2	0	0	0	1	1
Lunenburg/Mahone Bay	0	0	2	0	5	0
Middleton Police	3	0	1	1	2	0
New Glasgow/Westville Police	6	0	6	0	9	0
Springhill Police	1	0	4	1	11	0
Stellarton Police	2	0	1	0	4	0
Trenton Police	1	0	1	0	0	0
Truro Police	11	1	4	1	5	2
Unama'ki Police	0	1	0	0	5	0
Wolfville Police	1	0	1	0	0	1
Totals	**138**	**42**	**153**	**61**	**150**	**32**

Public Complaints - A total of 150 public complaints were received in 1999. This represents a .02 % decrease over the number registered with the Commission in 1998.

1999 Public Complaints
By Department

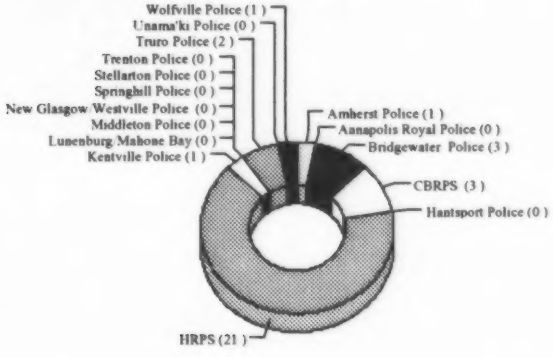

Wolfville Police (0)
Unama'ki Police (5)
Amherst Police (5)
Truro Police (5)
Annapolis Royal Police (0)
Trenton Police (0)
Bridgewater Police (2)
Stellarton Police (4)
CBRPS (27)
Springhill Police (11)
New Glasgow/Westville Police (9)
Hantsport Police (0)
Middleton Police (2)
Lunenburg/Mahone Bay (5)
Kentville Police (1)
HRPS (74)

1998 Public Complaints
By Department

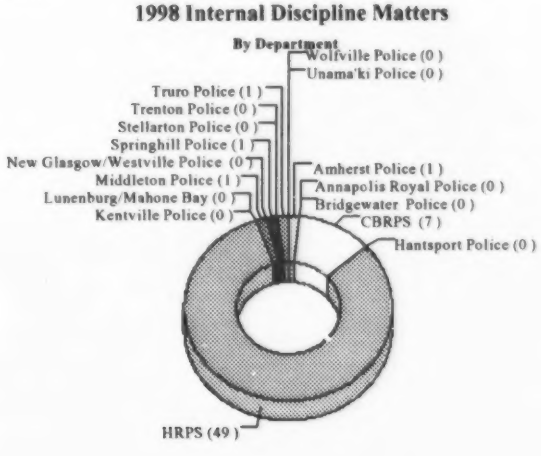


Internal Disciplinary Matters - A total of 32 internal disciplinary matters were received in 1999. This represents a 48% decrease in the number of internal matters filed with the Commission in 1998.

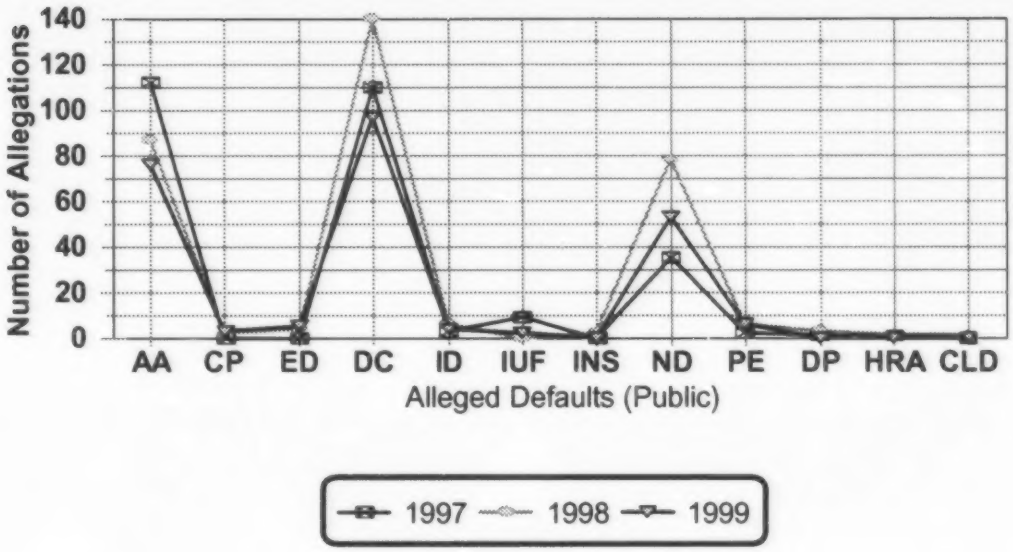
1999 Internal Discipline Matters
By Department


Wolfville Police (1)
Unama'ki Police (0)
Truro Police (2)
Trenton Police (0)
Stellarton Police (0)
Springhill Police (0)
New Glasgow/Westville Police (0)
Amherst Police (1)
Middleton Police (0)
Annapolis Royal Police (0)
Lunenburg/Mahone Bay (0)
Bridgewater Police (3)
Kentville Police (1)
CBRPS (3)
Hantsport Police (0)
HRPS (21)

1998 Internal Discipline Matters
By Department


Wolfville Police (0)
Unama'ki Police (0)
Truro Police (1)
Trenton Police (0)
Stellarton Police (0)
Springhill Police (1)
New Glasgow/Westville Police (0)
Amherst Police (1)
Middleton Police (1)
Annapolis Royal Police (0)
Lunenburg/Mahone Bay (0)
Bridgewater Police (0)
Kentville Police (0)
CBRPS (7)
Hantsport Police (0)
HRPS (49)

Public Complaints - Alleged Defaults [1]



Section	Abrev.	Alleged Defaults	1997	1998	1999
5(1)(g)	AA	Abuse of Authority	112	87	76
5(1)(f)	CP	Corrupt Practice	0	2	5
5(1)(d)	ED	Engages in Deceit	0	4	9
5(1)(a)	DC	Discreditable Conduct	110	140	115
5(1)(e)	ID	Improper Disclosure	3	6	5
5(1)(h)	IUF	Improper use of Firearm	9	0	2
5(1)(b)	INS	Insubordination	0	2	5
5(1)(c)	ND	Neglect of Duty	35	78	73
5(6)	PE	Public Expectation	2	6	6
5(1)(i)	DP	Damages Property	1	3	0
5(1)(k)	HRA	Human Rights Act	1	1	0
5(1)(j)	CLD	Consumes Liquor or Drugs	0	1	1
		Totals	273	329	246

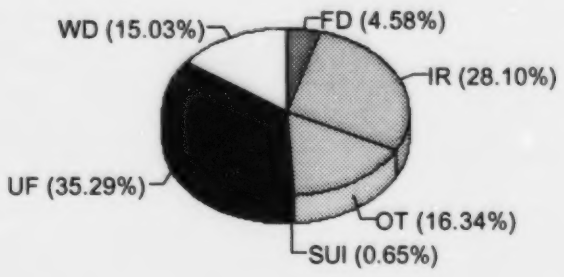
[1] Because a complaint may contain more than one allegation, and in order to more accurately reflect the nature of the complaints, our statistics above indicate the total number of allegations.

DISPOSITION (PUBLIC COMPLAINTS)

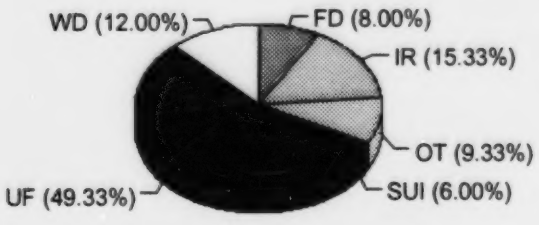
Disposition - Public	Abbreviation	1998	1999
Founded	FD	7	12
Informal Resolution	IR	43	23
Other [1]	OT	25	14
Unfounded [2]	UF	54	74
Still Under Investigation [3]	SUI	1	9
Withdrawn	WD	23	18
	TOTAL	**153**	**150**

These graphs illustrate the percentage of complaints filed with the Nova Scotia Police Commission in 1998 and 1999 and their disposition at the time of printing of this report.

1998 - Public Complaints



1999 - Public Complaints



[1] Other includes: Filed beyond eligible time period, Extensions not granted, Officer resigned, Criminally Investigated.

[2] Unfounded can result from: Investigated and deemed unfounded at department level, and not appealed by the complainant or deemed unfounded by the Police Review Board as a result of a hearing.

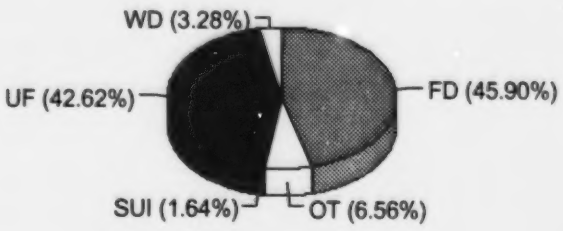
[3] Still Under Investigation includes at the Department level, the Commission level or awaiting hearing

DISPOSITION (INTERNAL DISCIPLINE)

Disposition - Internal	Abbreviation	1998	1999
Founded	FD	28	13
Others [1]	OT	4	3
Unfounded [2]	UF	26	6
Still Under Investigation [3]	SUI	1	6
Withdrawn	WD	2	4
	TOTAL	**61**	**32**

These graphs illustrate the percentage of Internal Discipline Matters filed with the Nova Scotia Police Commission in 1998 and 1999 and their disposition at the time of printing

1998 - Internal Discipline

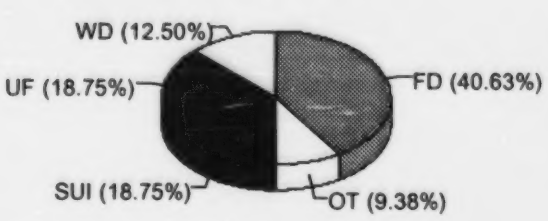


[1] Other includes: Filed beyond eligible time period, Extensions not granted, Officer resigned, Criminally Investigated.

[2] Unfounded can result from: Investigated and deemed unfounded at department level, and not appealed by the complainant or deemed unfounded by the Police Review Board as a result of a hearing.

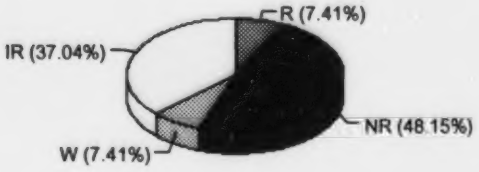
[3] Still Under Investigation includes at the Department level, the Commission

1999 - Internal Discipline

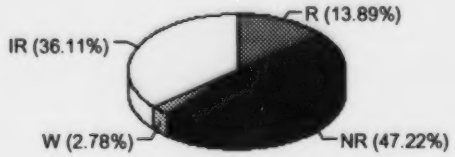


Investigations by Commission:

Disposition of 1998 Investigations
by Commission Investigators



Disposition of 1999 Investigations
by Commission Investigators



In 1999 the Police Commission investigated 36 appeals by complainants on grievances which were found unsustained at the department level. Our Investigators were successful in informally resolving 13 of the complaints, and referred 5 others to the Review Board for a hearing. Of the 17 complaints the Commission's Investigators did not refer to the Review Board, 14 were appealed by the Complainants to the Commission for an order to refer it to the Review Board. The Commission over ruled one of Investigator's recommendations and forwarded the matter to the Review Board.

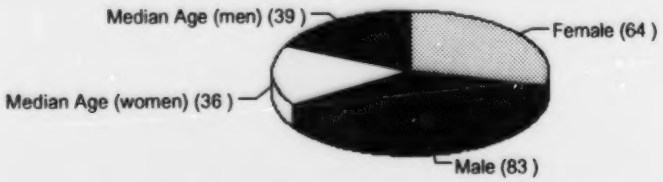
Legend: 1998	**Abbreviation**	**Disposition**
Investigator referred to Police Review Board	R	2
Investigator did not refer to Police Review Board	NR	13
Complaint Withdrawn	W	2
Complaint Informally Resolved by Investigator	IR	10
Investigator's Decision Appealed to Commission	AC	9
Investigator's Decision Not Appealed to Commission	NAC	4
Appeals to Commission referred to Police Review Board	CR	0
Appeals to Commission not referred to Police Review Board	CNR	9

Legend: 1999	**Abbreviation**	**Disposition**
Investigator referred to Police Review Board	R	5
Investigator did not refer to Police Review Board	NR	17
Complaint Withdrawn	W	1
Complaint Informally Resolved by Investigator	IR	13
Investigator's Decision Appealed to Commission	AC	14
Investigator's Decision Not Appealed to Commission	NAC	3
Appeals to Commission referred to Police Review Board	CR	1
Appeals to Commission not referred to Police Review Board	CNR	13

Demographics

In 1999 there were 64 complaints filed by women with a median age of 36. Men accounted for the other 83 public complaints filed and their median age was calculated to be 39.

Median Age & Sex of Complainants



The figures shown below indicate the actual number of instances in 1999 where there were reports of alcohol involvement, racial (stated or perceived) youth involvement; and/or family disputes on the part of the complainants or other parties. All data was collected from the Complaint Form or investigation reports.

	Alcohol Combined with other factors[1]	Single Factor Only
	21	56
Racism	7	11
Domestic	10	19
Youth	7	25

1. Combined with other factors indicates that more then one contributing factor may have been present during the time of incident. The Total instances indicates all of the occurrences when either a combination of factors or a single one was indicated.

Role and Composition of Police Review Board

The Police Review Board, as authorized in Section 28 of the Police Act, is composed of three members and alternates appointed by the Governor-in-council. The role of the Police Review Board is to conduct hearings into public complaints against the police and matters of internal discipline regarding the conduct of police officers.

As of December 31, 1999 the members of the Police Review Board are as follows:

Brian S. Creighton	Chair
Jean McKenna	Alternate Chair
Linda Fraser Alternate Member	
Gordon Patterson	Alternate Member
Theresa Meuse	Alternate Member
Brad Barton Alternate Member	

Mr. Brian Creighton was admitted to the Nova Scotia Bar in 1978 and is presently a Solicitor with Creighton, Shatford & Drysdale in the Town of Amherst.

Ms. Jean McKenna has several years experience as a teacher and was admitted to the Nova Scotia Bar in 1984. She is currently practicing with Huestis, Ritch in the City of Halifax.

Mrs. Linda Fraser of Chester, Nova Scotia is retired from her employment in the social services field. She has also served on many boards as a community volunteer worker.

Mr. Gordon Patterson of Cape Breton is retired from the Canadian Armed Forces. After his retirement from the Armed Forces he was employed as a Warden/Head Jailer until the jail's existence was terminated.

Ms. Theresa Meuse from Lantz, contracts undertakings with various MicMac Communities and is very active in local school development. She has served as the Community Health Coordinator with the Confederacy of Mainland Micmacs. She has also worked with the Confederacy as Employment Equity Coordinator and has developed community health plans for Member Bands.

Mr. Brad Barton of Dartmouth is a retired teacher and former vice-principal. Mr. Barton recently retired as the Supervisor of Race Relations and Human Rights for the Halifax Regional Municipal School Board and was awarded the Order of Canada in 1999.

Hearings

As of December 1999, the number of hearings conducted by the Police Review Board and number of meeting days in the previous three years are listed below.

	1997	1998	1999
Number of Hearings	16	13	11
Number of Hearing Days	18	15	14.5

A Sampling of CASE SUMMARIES

Case No. 1 An appeal of a disciplinary decision as a result of an internal complaint

Disciplinary Default: Engaging in discreditable conduct by acting in a disorderly manner or in a manner prejudicial to discipline or reasonably likely to bring discredit on the reputation of the police force and by contravening an *Act* of the Government of Canada.

Hearing Dates: June 3, November 2 & 3 and December 10, 1998

Before: Brian Creighton - Chair
Jean McKenna - Alternate Chair
Gordon Patterson - Member

Appearances: Joel E. Pink on behalf of the officer
John MacPherson on behalf of the Chief of Police and Halifax Regional Municipality.

Date of Decision: Written Decision - January 26, 1999

Summary of Decision: This matter came before the Board as a result of an internal disciplinary complaint which resulted in a constable of the Halifax Regional Police being dismissed.

The Board heard evidence that the constable had been found guilty in the criminal courts of assaulting and uttering threats against his former common law spouse. He was given a conditional discharge at sentencing.

In the course of the hearing, the Board heard that the relationship between the two was apparently never happy; the spouse moved out several times in the course of their relationship as did the officer. The relationship was described as tumultuous and there were frequent arguments. On the morning of the incident leading to these proceedings, it was learned that an argument arose and in the course of the argument the former spouse struck the officer who was driving a vehicle at the time. Later in the evening, further argument followed and continued in the home. The former spouse's version of events is that she tried to take the couple's child away from the officer who was holding her in his right arm. The officer testified that he was holding the child in his right arm but that the former spouse came at him as if to hit him, with her fist clenched. Both agreed that the officer responded by pushing her by the throat or head. The former spouse claimed that the officer threatened to shoot her between the

two eyes. The officer denied ever making such a threat. The former spouse called her neighbour to call the police and, notwithstanding her fear, remained in her home until the police arrived.

In its decision, the Board stated that it was satisfied that with respect to the assault, there had been a contravention of the Code of Conduct. The Board struggled with the conviction of uttering threats but noted that the former spouse had testified in the Provincial Court, whereas it had only the transcript of her evidence. It concluded there could be no issue as to the contravention of the Criminal Code with respect to the threats. In addressing the impact of the contravention, the Board stated it examined the evidence that was put before the Provincial Court, and the additional evidence heard at the hearing. The Board commented that, because they had the benefit of considerable information that was not before the trial judge, it concluded that the events of the incident were not as serious as they were portrayed by the former spouse at trial. The Board commented that it was not faced with the same constraints as the trial judge and as a result reviewed documentary evidence and heard extensive evidence from the officer's peers and supervisors which was not available to the trial judge. All these individuals spoke glowingly of his character, and in particular, his even temper, his non-violent nature, and his effectiveness in dealing with difficult people. The Board concluded that, at worst, the assault consisted of two pushes by the officer who had only one free hand at the time. Of concern to the Board is the fact that the pushes, and the threats if they were made, were delivered in the context of an angry argument. The Board was satisfied that the officer does not display a pattern of abusive behaviour; rather, at worst, he made an inappropriate response in the course of what can best be described as a dysfunctional relationship. The Board found that the reputation of the force would not be harmed in the eyes of a public fully appraised of the factual situation. It concluded the public would see need for some sanction, but would not want to see an otherwise excellent police officer's career destroyed as a result of a single incident.

The Board concluded, therefore, that although the incident does constitute disciplinary default, dismissal was not an appropriate action. The Board overturned the penalty of dismissal and imposed a thirty day suspension without pay and ordered him to be under close supervision for a period of six months following his return to duty.

Case No. 2 An appeal of a disciplinary decision as a result of an internal complaint.

Nature of Complaint: Neglect of duty by neglecting to or, without adequate reason, failing to promptly, properly or diligently perform a duty as a member of a police force.

Hearing Dates: July 24 and August 28, 1998

Before: Brian Creighton, Chair
Gordon Patterson, Member
Linda Fraser, Member

Appearances: Charles Broderick on behalf of the officer
Demetri Kachafanas on behalf of the Chief of Police and the Cape Breton Regional Municipality

Date of Decision: Oral Decision - August 28, 1998
Written Decision - March 16, 1999

Summary of Decision: These proceedings came before the Board as a result of an appeal by a constable of the Cape Breton Regional Police Service. The constable had received a penalty of a verbal reprimand for neglecting his duty by failing to complete an occurrence report arising out of an incident in New Waterford on November 10, 1997. The Board heard evidence that this officer and another had responded to a call of two fourteen year old girls who claimed they were being chased by a man. The evidence of the two girls and an independent witness was to the effect the girls had been in a wooded area when a man asked them to take their pants down. They fled the wooded area and approached a man on the street and told him what had happened. He subsequently called the police. After speaking with this man, the two girls proceeded further along the street and joined a group of friends. The two officers arrived and interviewed the alleged perpetrator as well as the two girls. The alleged perpetrator denied the allegations. The girls were interviewed and they declined to be involved in the laying of charges. They further declined an offer from the constables of a drive home and asked that the police not inform their parents as they were supposed to be baby sitting. One of the girls, after arriving home, became hysterical, crying and sobbing. Her father visited the police station and complained that there should have been a criminal investigation and that the parents should have been notified by the police after the incident was reported. He did not file a Police Act complaint.

The division's Inspector learned of the matter and instructed a sergeant to conduct a criminal investigation. He did not request nor receive a Police Act investigation from the sergeant. The inspector determined that the officers had not completed an occurrence report and formed the opinion that the officers had neglected their duty. He served them with a Form 8 (Notice of Allegation). The Board heard from the Chief of Police that he understood that the inspector had done a Police Act investigation and he treated a memo from the inspector to himself as being the investigation report. As a result, the chief made a finding of a disciplinary default and ordered that both of the constables receive a verbal reprimand. The Board heard that the officers had intended to complete an occurrence report but after speaking with the shift supervisor, it was agreed that a report was not required. The second officer did not appeal the Chief's decision.

The Board, in its decision, concluded that the investigation under the Police Act was flawed. The inspector was the complainant and the investigator in the matter. The Board ruled that, although the regulations do not specifically state that the complainant cannot investigate the complaint, it is inappropriate to do so. The investigator must be independent and unbiased in the execution of his duties. It was the opinion of the Board that both the Inspector and the Chief turned what could have been a constructive review of organizational and investigative policy/practice into a matter of discipline.

Because the two constables had reviewed the matter with their supervisor at the time of the incident and were advised that an occurrence report was not necessary, it was the decision of the Board that this situation did not merit a disciplinary finding against the officer. The Chief's decision was, therefore, set aside and the appeal allowed.

Case No. 3 An appeal of a decision as a result of a public complaint.

Nature of Complaint: Abuse of authority by making an arrest without just cause; abuse of authority by the use of excessive force; neglect of duty by failing to complete a proper and thorough investigation and; discourteous and uncivil behaviour.

Hearing Dates: May 28 and June 25, 1998

Before: Brian Creighton - Chair
Jean McKenna - Alternate Chair
Linda Fraser - Member

Appearances: David Fisher on behalf of the named officers
Roseanne Skoke on behalf of the Town of Stellarton

Date of Decision: Oral - June 25, 1998
Written - February 22, 1999

Summary of Decision: The complainant was arrested at his residence by two officers of the Stellarton Police Department. He was charged with assaulting his former common-law spouse who was visiting him at the time of the incident. There was conflicting evidence as to whether she was invited to the premises or whether she may have been a trespasser. The Board heard that a heated argument developed in which there may have been threats, pushing or hitting involved. The complainant called the police and two officers arrived at the residence. Upon arrival, the officers found four individuals in the residence: the complainant, his former common-law spouse, a friend of the complainant and a young child who was the daughter of the complainant and his former spouse. The officers interviewed the adults and subsequently arrested and incarcerated the complainant. He was taken to court the following morning.

The Board heard evidence with respect to the Minister of Justice's policy statement with respect to spousal/partner abuse and violence. The policy requires the police to arrest the alleged perpetrator when there is reason to believe that an assault has occurred and that there could be a continuance or repetition of the offence. The Board concluded that the officers believed on reasonable and probable grounds that the complainant had committed an assault on his former spouse. The Board commented that there was no question that the law permits police officers to make arrests under these circumstances. It also stated that there was no requirement that the officers be right, but only to carry on such initial investigations as they deem appropriate in order to determine, on reasonable and probable

grounds, the proper remedy. When they came to believe that an assault had occurred, the arrest of the complainant was warranted. The Board further concluded that the officers were carrying out their duties in accordance with existing law, practices and policy.

Case No. 4 A request for an extension in time to file a complaint.

Hearing Date: April 26, 1999

Before: Jean McKenna - Alternate Chair
Brad Barton - Member
Linda Fraser - Member

Appearances: David Fisher on behalf of the officer
Charles Ellis on behalf of the complainant

Date of Decision: Oral Decision - April 26, 1999
Written Decision - May 11, 1999

Summary of Decision: A member of the public made application for an extension in time to file a complaint against a member of the Springhill Police Department. He complained that the officer had failed to conduct a thorough investigation which resulted in him being charged for assault in the criminal courts. He testified that he had no idea why he was charged and that he was not contacted by the officer at any time prior to the Information being sworn. He stated that he first became aware of the incident when he returned from vacation. A customer told him that his name had been called in Court, however, he had not been served with a summons at that point. He contacted the police department and was informed he had been charged with assaulting another man. The matter proceeded to trial and he was acquitted. He testified that he did not file his complaint at that time for a number of reasons. He said he was very upset and under some emotional strain as a result of the charge. He also was hoping the officer, who had been a friend of his since his youth, would contact him directly. He wanted to take some time to consider the matter before taking a step that might impact on another individual the way the charge impacted on him. Finally, he said that he wished to review a tape of the trial hearing prior to taking any further steps. Upon completion of his review, he proceeded to file his complaint.

The Board, in its decision, stated it was satisfied that the complainant was under considerable stress following the laying of the charge. It also found it was reasonable for him to review the tape of the trial prior to making a determination. The Board was also concerned if the complaint was not proceeded with, then the issues between the complainant and the officer would go unresolved. Accordingly, the application was granted.

Case No. 5 An appeal of a disciplinary decision as a result of an internal complaint.

Disciplinary Default: Neglect of duty by neglecting to, or without adequate reason, failing to promptly, properly or diligently perform a duty as a member of the police service.

Hearing Dates: April 23, 1999

Before: Jean McKenna - Alternate Chair
Theresa Meuse - Member
Linda Fraser - Member

Appearances: Patrick Duncan on behalf of the officer
Sandra Arab on behalf of the Deputy Chief

Date of Decision: Written Decision - May 11, 1999

Summary of Decision: This matter was brought to the Board by an Inspector, a Subdivision Commander, with the Halifax Regional Police who had been disciplined by the Deputy Chief of Police. The Board heard evidence to the effect that a constable working in the same office was about to celebrate his 50th birthday. Two volunteer workers, both female, baked and decorated a cake in the form of a nude female torso. The cake was presented to the constable in his office which is out of public view. There were several persons, both male and female, which included members, civilian staff and volunteers present. A female officer who happened to drop into the office contended she was highly offended by the cake. She testified that she made her displeasure known by "running her mouth" and making comments to the effect that she "didn't believe this...this shouldn't be in here..." She said that no one seemed to acknowledge her reaction. She claimed that the Inspector carried the cake from the storage room to the Constable's office. Five and one half months after the incident, this officer filed a complaint against the Inspector. The evidence of the other witnesses, those who had been present on the date of incident, was to the effect that, in hindsight, the cake was inappropriate, however at the time those in attendance found the situation to be humourous and no one appeared to be offended. None of the witnesses supported the female officer with respect to the allegation that the Inspector had carried the cake to the Constable's office. There was evidence that the Inspector, after returning from vacation a short time later, was advised that the female officer was disturbed by the cake. He testified that he did not

approach the female officer about the incident, nor did she approach him.

The Board was referred to the police department policy with respect to sexual harassment which was in effect at the time of the incident. In part, the policy outlines the types of behaviour which constitute sexual harassment and includes "The display of sexually offensive materials."

The Board in its decision, noted that the female officer's concerns were known to the Inspector shortly after his return from vacation and that it appeared he did not discuss them with her in the hope that she had put the matter behind her and that raising the issue could only serve to aggravate matters. The Board found that was not an unreasonable conclusion on his part as nothing was mentioned by the female officer until she filed a formal complaint against him some five and-a-half months later. The Board found that this was an error in judgement on the part of the Inspector and, in the context of sexual harassment issues, it was probably a poor management decision. However, a wrong management decision, in the circumstances of this case, is not a disciplinary default.

The Board noted that the Regional Municipality now does have in place a very clear sexual harassment policy, which contains procedures specifically designed to deal with complaints of this nature. The procedures set out in that policy are in the view of the Board, much more appropriate and effective for dealing with complaints of sexual harassment than are the procedures under the *Police Act* and regulations. The Board very strongly recommended that in future, wherever possible, every effort should be made to channel complaints of this nature into the Halifax Regional Municipality complaints process, although acknowledged there will certainly be circumstances where a *Police Act* complaint may also be appropriate. The Board encouraged supervisory staff to deal with these issues in a pro-active manner.

The disciplinary action taken against the Inspector was overturned and the appeal allowed.

Case No. 6	An appeal of a disciplinary decision as a result of an internal complaint.
Disciplinary Default:	Engaged in discredible conduct by acting in a disorderly manner or in a manner likely to bring discredit on the reputation of the police force.
Hearing Dates:	April 26, 27, 28 and June 10, 1999
Before:	Jean McKenna - Alternate Chair Linda Fraser - Member Brad Barton - Member
Appearances:	David Fisher on behalf of the officer David Bright on behalf of the Town of Amherst and the Chief of Police
Date of Decision:	Written Decision - September 16, 1999
Summary of Decision:	This matter came before the Board as a result of a Town of Amherst Constable's appeal of disciplinary action taken by the Chief of Police. The uncontradicted conduct upon which the allegation was based was that the Constable had issued six NSF cheques, five of which were payable to himself and the sixth to a grocery store. The Board heard that the Constable was very active in a sporting association and had signing authority on the account. He was also part owner in a company with another individual and had signing authority in this entity. The evidence was that the cheques were not written in the normal sequence, but rather randomly throughout the chequebook, predominantly towards the back of the book. It also appeared that the stubs were actually removed from the book. All the cheques that form the subject of the disciplinary action were written to obtain a cash advance, with the exception of one. That cheque was written to cover two other cheques previously written to the grocery store which had been returned NSF. The Board heard that the Constable did repay any funds obtained with these cheques and had also settled any outstanding accounts with the sporting association. The evidence was also clear that the Constable made no attempt to conceal his identity when he cashed these cheques, and that he was known to the various individuals who cashed them. The Constable did not deny that his signature was on the cheques, however, he claimed that he had no recollection of writing them and had no understanding of why he would do so. He attributed his actions to a post-traumatic stress disorder.

The Board heard of a number of incidents in the Constable's history that allegedly gave rise to this condition. In 1986 he was employed as a guard at a federal penitentiary and was involved with the Emergency Response Team. The team was activated in response to a hostage taking incident and in the course of the action, a hostage was accidentally shot and killed by the team. In another incident in 1994, now a member of the police department, he was accidentally wounded through a displaced saw which resulted in a severed kneecap. He underwent a number of operations and was involved in extensive litigation with Workers' Compensation. Both parents died within a year of each other in the mid 1990s, and in 1995, while on duty, he was shot in the leg by a deranged man with a rifle. The Board heard evidence from the Constable's family doctor, his psychologist, and a psychiatrist as to the state of his mental health.

In its decision, the Board accepted the opinion of the family doctor and psychologist that the Constable was suffering Post Traumatic Stress Disorder. The Board commented that if this was a genuine attempt at fraud, then it was an exceedingly clumsy attempt; cheques were presented to individuals that knew him well and knew of his occupation; single signature cheques were presented on an account that required two signatures; discovery of the acts was inevitable, and in fact, one cheque was written after the internal investigation was initiated. The Board concluded that the conduct of the officer was atypical of him and that his behaviour was driven by illness. It further commented that this has been a very difficult issue for both the Department and the officer. The Board stated that it was appreciative of the sensitive manner in which the Department presented its own evidence and dealt with the situation. Accordingly, the appeal was allowed and the disciplinary action taken against the officer was overturned. The Board left it to the Department to determine at what point the officer can be considered fit to return to duty.

The Board further commented that in the context of present day employer/employee relationships, when an employee's misconduct is illness-related, recourse is usually had through a variety of employee assistance programs, including provision for counseling and treatment. It is seen as more appropriate to repair a valued but damaged employee than to penalize. This should be particularly so in the case where the illness is related to workplace events.

Case No. 7 An appeal of a disciplinary decision as a result of an internal complaint

Disciplinary Default: Neglect of duty by being absent from police duties without adequate reason.

Hearing Date: April 9, 1999

Before: Brian Creighton - Chair
Brad Barton - Member
Theresa Meuse - Member

Appearances: Patrick Duncan QC on behalf of the officer
Sandra Arab on behalf of the Deputy Chief of Police and the Halifax Regional Municipality

Date of Decision: October 17, 1999

Summary of Decision: This matter came before the Board as a result of an appeal by a member of the Halifax Regional Police. Evidence was given that the Constable had failed to show-up for an extra duty assignment which he was scheduled to work at Ports Canada. The amount of extra duty required for Ports Canada was significant enough that a "Ports Canada Extra Duty List" was maintained separately from the regular extra duty roster. The Board heard that the police department has a standard operational policy with respect to extra duty employment. It was explained that when businesses and other organizations require extra policing services, they are permitted to hire the department to provide those services. The organizer or owner pays the department and the department pay the officers. The Regional Municipality employs a civilian coordinator to ensure proper and consistent administration of the extra duty process. The Board learned that the coordinator was allowed to reassign extra duty if an officer assigned a particular duty reports in sick or there are extenuating circumstances. Policy specifically states that "members who become unable to perform an extra duty assignment must inform the Extra Duty Clerk or designate of the reason for his/her unavailability not later than three hours before the assignment is to commence." There is also policy which provides for an NCO designated by the Watch Commander to fill in for the Extra Duty Clerk in her absence, and the extra duty shall be assigned by the NCO in accordance with policy. There is also policy which prohibits the transferring of jobs between members.

In this case, the Constable was assigned to work extra duty on July 15, 1998. The day prior, he was in communication with his elderly father in Cape Breton who requested his assistance with work that he was doing on his house. The Constable placed a call to the Extra Duty Clerk at 4:00 p.m. but she was not in. He wanted to ensure the shift was filled and didn't want to just leave a message. He therefore put a call out through dispatch for someone to take his shift. Another officer agreed to do so. The Constable, believing he was covered, departed for Cape Breton. He acknowledged that he was aware of the reporting requirements of the policy and procedures and regretted he had not left a voice message for the Extra Duty Clerk. He also advised he was aware if he couldn't reach the Extra Duty Clerk, he should have tried to contact the appropriate NCO. He was of the opinion the officer who was filling his shift would look after this administrative process for him.

The Board, in its decision, found that the Constable had adequate reason to be absent from the extra duty. It interpreted the words "extenuating circumstances" to mean that if a significant family responsibility arises and an officer had otherwise volunteered for extra duty, the officer has the right to not perform the extra duty on reasonable notice to the Extra Duty Clerk or her designate. The Board found as fact that the Constable's assistance was needed by his elderly father. The Board further found that the issue, at the department level, became not whether there was adequate reason for the Constable to not have shown up for his shift, but one of failure to properly follow the administrative policy. That is, the finding of a disciplinary default was that he did not phone the Extra Duty Clerk or the Watch Commander personally.

The Board concluded that there may well be circumstances where police officers do not follow proper internal administrative procedures which may constitute breaches of the Code of Conduct and Discipline, this is not such a case. Accordingly, the appeal was allowed and the discipline set aside. As a part of the discipline handed to the officer, he was suspended from the Ports Canada Extra Duty List for a period of time. The Board concluded this was not a matter for it to determine as it was not within its jurisdiction to determine whether or not administrative penalties can be levied outside the disciplinary default process. The Board recognized that a minor administrative sanction might be useful in ensuring that officers familiarize themselves with and adhere to internal operational policies.